In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 759

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ORDER OF RAILWAY CONDUCTORS, AND BROTHERHOOD OF LOCOMOTIVE ENGINEERS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

The action filed by the United States in the District Court to enjoin the defendant Brotherhoods from striking was predicated upon (1) the strike which had been called by the Brotherhoods, and (2) the fact that the United States had taken possession of the railroads and was operating them pursuant to Executive Orders 10155 and 10141. *Cf. United States* v. *United Mine Workers,* 330 U. S. 258. A restraining order and preliminary

injunction against the strike have been entered by the District Court. Petitioners are seeking reversal of the temporary injunction in this Court before hearing in the Court of Appeals.

On May 21, 1952, after the filing of the petition for a writ of certiorari, the wage dispute between petitioners and the carriers was settled, and new contracts running for sixteen months were thereafter signed. New York Times, May 24, 1952, p. 1, col. 3. Thus the labor dispute which gave rise to the strike enjoined by the order under review has come to an end. Recurrence of the acts enjoined within a reasonably definite time is improbable, especially since the new contracts will not expire before the fall of 1953. Moreover, as will appear from the orders attached hereto, on May 23, 1952, the United States relinquished possession, control, and operation of the railroads, so that they are now restored to private ownership.

Since the acts complained of have been abandoned with no likelihood of recurrence and the basis for the Government's suit has disappeared, the Government would have dismissed its complaint in the District Court if the petition for certiorari had not been filed. The circumstances related above demonstrate that there is no longer any controversy, that the case has become moot (*Walling* v. *Shenandoah-Dives Mining Co.*, 134 F. 2d 395, 397–398 (C. A. 10); cf. *Walling* v. *Hel-*

merich & Payne, 323 U. S. 37, 43; *McComb* v. *Wyandotte Furniture Co.,* 169 F. 2d 766, 770 (C. A. 8), and that the District Court no longer has jurisdiction to entertain the suit.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari be denied with leave to the United States to move to dismiss the proceedings in the District Court, or, in the alternative, that the petition for a writ of certiorari be granted and the case remanded to the District Court with directions to vacate its order and to dismiss the proceedings upon the ground that the cause is moot (*Securities and Exchange Commission* v. *Harrison,* 340 U. S. 908).

PHILIP B. PERLMAN,
Solicitor General.

JUNE 1952.

APPENDIX A

The Honorable
THE SECRETARY OF THE ARMY,
Washington 25, D. C.

DEAR MR. SECRETARY: The labor difficulties underlying the issuance of Executive Order No. 10141 dated 8 July 1950 and Executive Order No. 10155 dated 25 August 1950 have now been settled and interruptions in normal rail service no longer threaten.

It is, accordingly, in order for you to initiate immediate steps for the termination of possession, control and operation of the transportation systems affected by the above mentioned Executive Orders to become effective at the earliest feasible moment.

Yours very truly,

HARRY S. TRUMAN.

APPENDIX B

ORDER OF THE SECRETARY OF THE ARMY TERMINATING GOVERNMENT CONTROL OF THE RAILROADS

Pursuant to the provisions of Executive Order No. 10141, dated 8 July 1950 and Executive Order No. 10155, dated 25 August 1950, I hereby determine that continued possession, control and operation by the United States of the transportation systems taken and assumed by or pursuant to those orders, are no longer necessary to carry out the provisions and to accomplish the purpose of said Executive Orders; and it is hereby ordered, that:

1. Possession, control and operation by the United States of all the transportation systems, taken or assumed by or pursuant to either of said Executive Orders including all the real and personal property and other assets taken or assumed in connection therewith, are hereby terminated and relinquished as of 4 o'clock P. M., EDT, 23 May 1952. No further action shall be required to effect the termination of Government control and relinquishment of possession hereby ordered.

2. All claims and rights which the United States may have to an accounting with respect to the operation of the carriers during the period of Government possession, control and operation are hereby waived and released as to each carrier the possession and control of any of whose properties were taken pursuant to either of said Exec-

utive Orders, conditioned upon the execution and delivery by the carrier to the United States of an instrument in the form approved by the Secretary of the Army indemnifying and saving harmless the United States, its officers, agents, and employees, against liability to third parties arising out of or in connection with said possession, control and operation and agreeing to assume the defense of any such parties in any action or claim arising out of or in connection with such possession, control and operation, and releasing and discharging the United States, its officers, agents, and employees from all claims by or on behalf of the carrier, which have been, or otherwise might in the future be, asserted arising out of or in connection with the possession, control and operation of its properties by the United States, its officers, agents, and employees during said period.

3. The right of the United States to such an accounting is hereby expressly reserved as to any carrier which fails to execute and deliver such instrument of indemnification and release or which otherwise asserts or reserves any claim against the United States, its officers, agents, or employees arising out of or in connection with said possession, operation, and control, except as may otherwise have been provided by an "operating agreement" heretofore executed between the Government and the carrier concerned covering their respective rights and obligations during the period of Government possession, control and operation. In lieu of the instrument of indemnification and release provided in paragraph 2 hereto, any carrier may elect to execute an in-

strument of indemnification and release with exceptions and limitations as provided in such "operating agreement". Should any carrier elect to execute and deliver an instrument of release and indemnification with any exceptions or limitations as provided in such operating agreement, such instrument shall be in the form approved by the Secretary of the Army and shall not be accepted on behalf of the Government as a compliance with the terms of such agreement until approved by the Secretary of the Army.

FRANK PACE, JR.,
Secretary of the Army.

APPENDIX C

Message.

DEPARTMENT OF THE ARMY
STAFF COMMUNICATIONS OFFICE

Priority (Book MSG).
(Addressed Separately).

To: All Railroad Presidents, Trustees, or General Managers of Rail Transportation systems Seized Pursuant to Executive Order 10141, Dated 8 July 1950, and Executive Order 10155, Dated 25 August 1950.

Info: Regional Directors, and Commanding Generals of the Continental Armies.

NR: DA 330578 23 May 52.
Official from Bendetson.

Department of The Army possession, operation and control of the rail transportation system owned by your company terminates this date at 4:00 o'clock P. M. Eastern Daylight Time. Confirmation order and essential documents mailed this date.

(8)

U. S. GOVERNMENT PRINTING OFFICE: 1952

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 759

Office-Supreme Court, U. S.
FILED
JUN 7 1952
CHARLES ELMORE CROPLEY

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Petitioners

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

The United States of America has asserted in its memorandum that the labor dispute between petitioners and all of the railroad companies seized under Executive Order [illegible]

v.

UNITED STATES OF AMERICA

REPLY BRIEF FOR PETITIONERS

The United States of America has asserted in its memorandum that the labor dispute between petitioners and all of the railroad companies seized under Executive Orders Nos. 10141 and 10155 has been settled. Such is not the case. Several railroads which were subjected to government seizure were not represented by the carriers' conference committees which negotiated the recent settlement with petitioners. Petitioners still have pending on those railroads unsettled labor disputes which arose out of notices served by petitioners similar to the ones disposed of in the settlement. In the event the remaining and continuing controversies are not separately settled between the several involved railroads and petitioners, and an interruption to commerce is threatened, there may arise the necessity in the mind of the executive department to again seize the involved railroad properties. For these reasons petitioners feel that the controversy cannot be said to be moot.

There are additional reasons which petitioners urge militate against the dismissal of this cause on the ground that the settlement of the underlying labor dispute renders the controversy moot. Authoritative appellate review on this question of railroad employees' right to strike is of the greatest importance to the petitioners, to the thousands of railroad employees they represent, to public officials, and to the public. When the District Court issued its injunction, the petitioners had but one logical course to follow and that course was to obey the injunction, continue their negotiations with the railroads, and simultaneously strive for

appellate review to determine the rights of the petitioners in the immediate and future disputes. To refuse to continue negotiations until appellate review was had would have been risky, unfair to their membership already embittered by unsatisfactory negotiations of three years' duration, and against the public interest.

There is present here a strong probability of renewed controversy, arising out of disputes between railway labor organizations and even those railroads parties to the recent settlement, for bargaining between the petitioners and the railroads, on an individual railroad or on a nationwide basis, is a constantly recurring process under the Railway Labor Act, and many times a strike is threatened or an actual strike occurs before disputes are resolved. As a result of labor controversies the government seized the railroads of the nation in 1943, 1946, and 1948. Never have the railroad labor organizations had the opportunity to secure an appellate review that would for once and for all determine the questions we have urged this court to consider and which are raised in our petition for a writ of certiorari. A vigorous but unsuccessful attempt to secure such a review was made by two of the petitioners here in 1948.

Because of the settlement of the underlying labor dispute, the Court of Appeals for the District of Columbia Circuit then held the controversy moot and a petition for a writ of certiorari filed in this court was denied. United States v. Brotherhood of Locomotive Engineers, 79 F. Supp. 485, dismissed as moot 174 F. 2d 160, certiorari denied 338 U. S. 872. (See also United States v. Switchmen's Union, 97 F. Supp. 97, which was dismissed after filing of the notice of appeal because the underlying labor dispute had been settled). The argument was then made by petitioners in that case that a similar situation was likely to arise. It did arise just two years later and it requires no

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Goodyear Co., 304 U. S. 257.

Where matters of public interest are involved the principle discussed in the preceding paragraph is particularly applicable. This court and the lower federal courts have consistently held that a case will not be considered moot if public questions are involved which require determination to serve as a guide to public officials in future similar matters. United States v. Freight Assn., 166 U. S. 290, 307-310; Gay Union Corporation v. Wallace, 71 App. D. C. 382, 385, 112 F. 2d. 192, 195, cert. denied 310 U. S. 647; Boise City Irr. & Land Co. v. Clark, 131 Fed. 415, 419 (C.C.A. 9); Walling v. Haile Gold Mines, 136 F. 2d 102, 105 (C.C.A. 4); Walling v. Mutual Wholesale Food & Supply Co., 141 F. 2d 331, 335 (C.C.A. 8); Howard v. Wilbur, 156 F. 2d 884, 885 (C.C.A. 6). The instant case squarely meets this test.

The petition for a writ of certiorari ought to be granted and the questions presented therein decided by this court.

Respectfully submitted,

~~Clifford D. O'Brien~~

Harold C. Heiss

Charles W. Phillips

V. C. Shuttleworth

Counsel for Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and ~~Brotherhood of Locomotive Engineers~~, Petitioners.

June 7, 1952.

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